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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW FIKES,
ROSS KONINGSTEIN,
and
JOHN BAUER

Appeal 2009-0198
Application 10/676,195
Technology Center 1700

Decided:[1] March 31, 2009

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

MURRIEL E. CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1]The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 2 to 6, 8 to 15, 17 to 28 and 30. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented a system and method for automatically targeting web-based advertisements (Specification 1).

Claim 2 under appeal reads as follows:

> 2. A system for automatically targeting Web-based advertisements, comprising:
> an indexer to identify advertisements relative to a query, wherein identified advertisements describe characteristics relative to at least one of a product and a service;
> a scorer to score the advertisements according to match between the query and the characteristics of the identified advertisements; and
> a targeting component to provide at least some of the advertisements as Web-based content, wherein a numerical score is assigned to the identified advertisements based on a degree of the match.

The Examiner rejected claims 2 to 5, 8 to 15, 17 to 19, 21 to 28 and 30 under 35 U.S.C. § 102(e) as being anticipated by Radwin.

The Examiner rejected claims 6 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Radwin.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Radwin	US 2003/0050863	Mar. 13, 2003

ISSUES

Have Appellants shown that the Examiner erred in finding that Radwin discloses a scorer to score advertisements according to the match between the query and the characteristics of the identified advertisements wherein a numerical score is assigned to the identified advertisement based on a degree of the match?

Have the Appellants shown that the Examiner erred in finding that Radwin discloses a selector to select at least some of an ordered identified advertisements relative to a ranking cutoff?

Have the Appellants shown that the Examiner erred in finding that Radwin suggests a filter to filter advertisement based on demographic information?

FINDINGS OF FACT

Appellants' Specification discloses a system and method for automatically targeting Web-based advertisements which includes a scorer to score the advertisements according to a match between the query and the characteristics of the advertisement (Specification 9). The score is based on a degree of match between the query and the characteristics of the advertisement (Specification 9). The match measures the closeness of fit between the query terms 40 and one or more category names 51 of products and services to arrive at advertising results 43 (Specification 10). A filter prunes the results 43 by applying classification factors such as country, locale, language, daily budget, and other factors in the query 39 to the information and characteristics associated with each advertisement result 43. After that, a ranker 38 applies selection criteria to the advertising results 43

remaining against a predefined scoring threshold and applies a ranking cutoff to determine the advertising results that are acceptable in terms of costs (Specification 10).

Radwin discloses a system and method for automatically targeting Web-based advertisements that matches a keyword in a query to advertisements in an advertisement repository 20 [0026]. The advertisement repository 20 has an hierarchical structure [0040]. As disclosed in Figure 5, the advertisement repository is organized so that each advertisement 44 is given a number 40 and an ad type 41. An editorial staff may add a keyword flag 45 for immediate presentation or an advertisement weighting value 47 [0040]. The weighting value 47 is a value set to indicate how valuable and/or relevant a particular advertisement is relative to other advertisements [0040]. The weighting value 47 is set in accordance with an advertisement agreement as well as the experience and suggestions from the respective advertisers [0040]. As shown in Figure 5, advertisement A_1 has an ad type of apparel, no keyword flag and a weighting value of 2 whereas advertisement A_n has no keyword flag and a weighting value of 9 and thus may have a higher probability of being shown than A_1 [0041]. An advertiser may also have an arrangement that guarantees an amount of impressions per period of time [0041].

Radwin does not disclose giving a numerical score to an advertisement based on a degree of match between a query and the characteristics of the advertisement. While Figure 5 of Radwin discloses a score of sorts based on the weighting value and keyword flags, this score is not based on a degree of match between the query and the advertisement characteristics but instead based on an agreement made by the advertiser.

Radwin does not disclose a selector to select some of ordered advertisements relative to a ranking cutoff. While Figure 5 may disclose a ranking of the advertisements based on the weighting value and the keyword flag, and an ordering of the advertisement, there is no disclosure of a cutoff related to the ranking of the advertisement.

Radwin discloses that using demographic characteristics such as age, income, sex, and occupation to target the presentation of advertisements to users is known but has drawbacks because users provide inaccurate information [0007-0008].

PRINCIPLES OF LAW

To support a rejection of a claim under 35 U.S.C. § 102, it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. *See Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984).

A reference may be said to teach away from the invention if the reference criticizes, discredits, or otherwise discourages modifying a reference to arrive at the claimed invention. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

ANALYSIS

Anticipation

We will not sustain the Examiner's rejection of claim 2. We agree with the Appellants that Radwin does not disclose a numerical score assigned to an identified advertisement based on a degree of match. Rather,

any score given to the advertisements relates to a keyword flag or weighting values which relate to prior agreements between the advertiser and the system. As such, we will not sustain the Examiner's rejection of claim 2 and claims 3 to 5 and 12 to 14 dependent thereon.

We will also not sustain this rejection as it is directed to claim 8 because Radwin does not disclose a cutoff for the presentation of the advertisements based on the ranking of the advertisement. Although, the Examiner is correct that a cutoff is employed in the Radwin reference in that not all of the advertisements are shown, there is no disclosure in Radwin that this cutoff is a ranking cutoff. As such, we will not sustain the Examiner's rejection of claim 8 and claims 9 to 11 dependent thereon.

We will also not sustain this rejection as it is directed to claims 15 and 30 and claims 17 to 19 and 21 to 28 dependent thereon because claims 15 and 30 both recite subject matter related to the scoring of advertisements according to a degree of match between the query and characteristics of the advertisements that we found missing in Radwin.

Obviousness

We will sustain the Examiner's rejection of claim 6 because Radwin discloses that it was known to filter advertisement based on demographic information. The disclosure that users may input inaccurate information thereby making the demographic filtering based on underlying assumptions that are not accurate merely makes the reader aware of the limitations and that frequently those limitations may be sufficient to weigh against the advantages. In our view, this is not a teaching away. A known or obvious

element does not become patentable simply because it has been described as somewhat inferior to some other product for the same use. *See In re Gurley*, 27 F.3d 551, 554 (Fed. Cir. 1994).

We will not sustain this rejection as it is directed to claim 20 because claim 20 is dependent on claim 15 which includes the scoring of advertisements according to the degree of match that we found lacking in Radwin.

CONCLUSION OF LAW/DECISION

On the record before us, Appellants have shown that the Examiner erred in rejecting claims 2 to 5, 8 to 15, 17 to 19, 21 to 28 and 30 under 35 U.S.C. § 102(e) as being anticipated by Radwin, and claim 20 under 35 U.S.C. § 103 as being unpatentable over Radwin. Appellants have not shown that the Examiner erred in rejecting claim 6 under 35 U.S.C. § 103 as being unpatentable over Radwin.

The Examiner's rejection of claims 2 to 5, 8 to 15, 17 to 28 and 30 is not sustained. The Examiner's rejection of claim 6 is sustained.

AFFIRMED-IN-PART

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